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**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 WESTERN DIVISION**

**GARY L. SMITH, JR., on behalf of  
 himself and all others similarly  
 situated,**

**Plaintiff,**

**vs.**

**HARBOR FREIGHT TOOLS USA,  
 INC.,**

**Defendant.**

2:13-cv-06262- JFW\_\_\_\_\_

**NOTICE OF RELATED CASE  
 AND REQUEST FOR RELATED-  
 CASE TRANSFER**

**JURY TRIAL DEMANDED**

**NOTICE OF RELATED CASE**

In compliance with Local Rule 83-1.3, Plaintiff hereby gives notice to the Court of the existence of a related case to which this case should properly be transferred and consolidated. On September 14, 2012, the action entitled *John Doe v.*

1 *A-Check America, Inc., et. al* (“*Doe*”), was removed to this District and assigned case  
 2 no. 2:12-CV-07960-MMM (AGR).<sup>1</sup> As fully discussed below, as established by  
 3 Local Rule 83-1.3, this case is related to *Doe* and should therefore be transferred to  
 4 that court and consolidated with *Doe* for resolution before the same judge.

5 **STATEMENT OF FACTS**  
 6 **SUPPORTING TRANSFER AND CONSOLIDATION**

7 Transfer of this Action to Judge Morrow’s Court for consolidation with the  
 8 *Doe* matter is entirely appropriate for several reasons. As set forth in Local Rule 83-  
 9 1.3, cases are properly related if they appear:

- 10 (a) To arise from the same or a closely related transaction, happening  
 or event; or  
 11 (b) To call for determination of the same or substantially related or  
 12 similar questions of law and fact; or  
 13 (c) For other reasons would entail substantial duplication of labor if  
 heard by different judges; . . . .

14 L.R. 83-1.3. Here, any of these grounds independently supports relating and  
 15 consolidating this case with *Doe*. Taken, together, these factors virtually compel that  
 16 outcome.

17 **I. The Two Cases Arise From the Same Transaction or Event**

18 As set forth in the *Doe* Complaint, Gary L. Smith, the identical Plaintiff here,  
 19 applied for work with Harbor Freight Tools in November, 2011. (Ex. 1, *Doe* First  
 20 Am. Compl. (“FAC”) ¶ 28; *see also* Ex. 2, Declaration of Autumn Clemmens in  
 21 Support of A-Check America Inc.’s Motion for Summary Judgment filed in *Doe* ¶¶  
 22 3–4 and Ex. A (identifying the individual who applied at Harbor Freight Tools as  
 23 Gary L. Smith).) Harbor Freight interviewed him and obtained a background check  
 24

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25 <sup>1</sup> Although *Doe* was settled and dismissed on August 29, 2013, transfer is still appropriate because  
 26 Local Rule 83-1.3 expressly contemplates relating a case to one that has been resolved, as it  
 27 explains that the notice of related cases may target “any action previously filed or *currently*  
 28 *pending*.” L.R. 83-1.3.1 (emphasis added).

1 from A-Check for Harbor Freight to use in its hiring decision. (Ex. 1, *Doe* FAC ¶ 29.)  
2 A-Check, at Harbor Freight's request, created Plaintiff's consumer report and then,  
3 nearly instantaneously thereafter, adjudicated Plaintiff as ineligible for hire with  
4 Harbor Freight because of information contained in his background report. (*Id.* ¶¶ 30–  
5 31.) Notably, A-Check's report about Plaintiff contained information that should have  
6 been excluded from the report because of its age, reported a single criminal case as  
7 two separate counts, and misreported the sentence of that single count. (*Id.* ¶¶ 34–39.)  
8 Harbor Freight did not hire Plaintiff, and he sued A-Check alleging, among other  
9 things, A-Check's failure to: (1) follow Fair Credit Reporting Act ("FCRA") and  
10 California's Consumer Credit Reporting Agencies Act ("CCRAA") strictures for  
11 accuracy in creating reports (*id.* ¶¶ 41–43, 53–55); (2) properly reinvestigate  
12 Plaintiff's dispute about the inaccuracies in his A-Check report (*id.* ¶¶ 46–51, 59–62);  
13 and (3) ensure it obtains the proper certification for releasing reports for employment  
14 purposes. (*Id.* ¶¶ 64–66.)

15 Similarly, the Complaint here explains the relationship between A-Check and  
16 Harbor Freight, as both were directly involved in Plaintiff's application for  
17 employment. Plaintiff sought work at Harbor Freight's Long Beach location, and  
18 Harbor Freight used as part of its application process a standardized form to obtain  
19 Plaintiff's permission to procure a background report on him. (Dkt. No. 1 ¶¶ 21–24.)  
20 A-Check, the Defendant in the *Doe* case, provided Harbor Freight with the form  
21 authorization while also purporting to maintain responsibility for its content. (*See id.*  
22 ¶ 17 ("This form is the property of A-Check America, Inc. No alterations to its  
23 content may be made without the prior written consent of its author.")). Further, A-  
24 Check provided, on behalf of Harbor Freight, certain notices that are required of  
25 employers when they refuse to hire or discharge workers based on information  
26 contained in consumer reports like the one about Plaintiff that A-Check provided  
27 Harbor Freight. (*Id.* ¶¶ 26–28.) In addition, Plaintiff also alleges (as he did in *Doe*), it  
28

1 was actually A-Check, not Harbor Freight itself, who made the decision that Plaintiff  
2 was disqualified from employment at Harbor Freight because of information  
3 contained in Plaintiff's A-Check background report. (*Id.* ¶¶ 30–31.)

4 The claims Plaintiff makes in this case arise from the identical transaction or  
5 event as did his claims in the *Doe* case—his application for and rejection of  
6 employment with Harbor Freight. The actions of A-Check and Harbor Freight are so  
7 completely intertwined, including A-Check's provision of authorization forms and  
8 background checks to Harbor Freight, as well as A-Check's decisions—on Harbor  
9 Freight's behalf—that consumers like Plaintiff are ineligible for employment with  
10 Harbor Freight, that the *Doe* court is the proper court to hear this case. Indeed, given  
11 the facts and Parties, it is difficult to imagine two cases that are more closely aligned  
12 as this Action and *Doe*. Accordingly, this case should be transferred to the *Doe* court  
13 for consolidation and further litigation.

14 **II. This Action and *Doe* Require Determination of the Same Questions of Law**  
15 **and Fact**

16 Aside from the fact that this case arises from the same transaction as *Doe*, it  
17 should be transferred and consolidated with *Doe* because of the legal and factual  
18 similarities of the two cases. In *Doe*, Plaintiff asserted various claims under the Fair  
19 Credit Reporting Act FCRA, CCRAA, and California's Investigative Consumer  
20 Reporting Agencies Act ("ICRAA") related to the use of background checks for  
21 employment purposes. Specifically, Plaintiff alleged in *Doe* that he applied for and  
22 was offered employment with Harbor Freight, A-Check provided Harbor Freight with  
23 a consumer report about him, and A-Check made a hiring decision for Harbor Freight  
24 based on the inaccurate contents of Plaintiff's report. (Ex. 1, *Doe* FAC ¶¶ 28–31.)  
25 Plaintiff further alleged that, as a result of A-Check's treatment of his background  
26 information in the employment context, A-Check failed to meet the requirements of  
27 the FCRA, CCRAA, and ICRAA regarding the accuracy of the information contained  
28

1 in his report, the dispute procedures it enlisted, and through its failure to properly  
 2 notify the subjects of reports about their rights under California law. (*Id.* ¶¶ 40–74.)

3 Just as in the *Doe* matter, this case alleges violations of the FCRA and CCRAA  
 4 relating to the use of background checks for employment purposes, but focuses  
 5 instead on the employer, Harbor Freight, rather than the provider of those reports.  
 6 (Dkt. No. 1 ¶¶ 38–46.) Despite that difference, however, the Court that hears this case  
 7 will still answer substantially similar questions of law and fact, such as: (1) whether  
 8 the FCRA and CCRAA apply to Harbor Freight’s conduct, (2) whether Harbor  
 9 Freight’s conduct constitutes a violation of the FCRA and CCRAA as Plaintiff  
 10 alleges, (3) whether those violations were willful such that statutory and punitive  
 11 damages would be appropriately awarded, and (4) whether A-Check’s failure to  
 12 provide proper FCRA notice on behalf of Harbor Freight is attributable to Harbor  
 13 Freight. These legal and factual questions closely mirror those at issue in *Doe*,  
 14 making transfer to the *Doe* court appropriate under the circumstances.

15 Further, Plaintiff has substantial basis to believe that there is an existing  
 16 indemnification relationship between Harbor Freight and A-Check, which will  
 17 necessarily require the inclusion of A-Check in any mediation or settlement  
 18 discussion between Plaintiff and Harbor Freight. Relation and even consolidation of  
 19 the cases will best enable this process. Accordingly, the Court should order this case  
 20 transferred to Judge Morrow’s court for litigation on the same track as was *Doe*.

### 21 **III. There Would Be a Substantial Duplication of Effort If This Court Heard** 22 **This Case**

23 The *Doe* case was on file in Judge Morrow’s Court for more than eleven  
 24 months, and A-Check asserted both a motion to dismiss and a motion for summary  
 25 judgment. (*See* Ex. 3, *Doe* Dkt. Sheet at Dkt. Nos. 7, 15, 36.) Plaintiff fully expects to  
 26 engage in at least that level, if not more, of motion practice in this case, and Judge  
 27 Morrow’s familiarity with the facts, issues, and provisions of the FCRA and CCRAA  
 28

1 asserted in *Doe* will bring valuable insight into the determination of those motions  
2 and the additional questions that will undoubtedly arise in this case. On the other  
3 hand, this Court will have to begin fresh, without earlier knowledge of the facts and  
4 Parties at the center of this dispute, requiring effort that Judge Morrow will not have  
5 to undertake in order to be familiar with the case from the very start. Under Rule 83-  
6 1.3, this duplication of effort is sufficient grounds to warrant transfer of the case to  
7 Judge Morrow's court.

#### 8 **IV. Conclusion**

9 While this Court is no doubt capable of presiding over this case through  
10 resolution, Rule 83-1.3 requires that the case be transferred to the Judge Morrow's  
11 court, where litigation over Plaintiff's application for employment with Defendant  
12 Harbor Freight began. Judge Morrow oversaw the companion case against the  
13 reporting agency that provided the report on which Harbor Freight's employment  
14 decision was made, putting her in a unique position to efficiently preside over this  
15 case as well. Accordingly, the Court should order this case transferred to Judge  
16 Morrow's court for consolidation with the *Doe* case.

17  
18 Date: September 5, 2013

Respectfully submitted,

19 **CADDELL & CHAPMAN**

20  
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